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IN THE

Supreme Court of the United States

October Term, 1977
No. 77-1222

NORMA RUUD, ROYCE RUUD, and
WILLMAR NURSING HOME, INC.,
Petitioner,

vs.

STATE OF MINNESOTA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MINNESOTA

BRIEF OF RESPONDENT STATE OF MINNESOTA IN OPPOSITION

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This brief is submitted by Respondent State of Minnesota in opposition to the Petition for a Writ of Certiorari to the Supreme Court of Minnesota.

OPINIONS BELOW

The opinion of the Supreme Court of Minnesota is reported at —— Minn. ——, 259 N.W.2d 567 (1977) (Appendix A of Petition).

JURISDICTION

Petitioners assert that the jurisdiction of the United States Supreme Court is invoked under United States Code, Title 28, Sec. 1257, 62 Stat. 929.[1]

QUESTIONS PRESENTED

1. Did the search warrants meet the particularity requirements of the Fourth Amendment?
2. Was the search legally executed in a manner consistent with the scope of the warrants?
3. Were the affidavits in support of the search warrants sufficient to support a finding of probable cause?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent constitutional and statutory provisions involved are set forth in the Petition. However, Respondent asserts that Section I of Amendment XIV of the United States Constitution is not relevant to the issues presented in the Petition.

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[1] It appears that the Petition mistakenly cites Title 18 (Petition 2).

STATEMENT

Petitioner, Willmar Nursing Home, Inc., is a nursing home located in Willmar, Minnesota . The majority stockholders and officers of the corporation are a husband and wife, Norma and Royce Ruud, who also serve as administrators of the home. One major source of revenue for the Willmar Nursing Home over the past several years has been welfare reimbursement for services provided for welfare eligible patients through the Medical Assistance (Medicaid) program.

The Medical Assistance program is authorized and generally governed by Title XIX of the United States Social Security Act and Minnesota Statutes Chapter 256B, and it is administered in Minnesota by the Minnesota Department of Public Welfare (hereinafter DPW).

The "price" which DPW will pay a nursing home for services rendered to welfare residents is determined through application of Minn. Rule DPW 49. Rule 49, which was promulgated in 1972, establishes what is known as a "cost-based" system of reimbursement. Under this system a nursing home's per diem welfare rates are based primarily upon the legitimate costs of operation which the home incurred during its preceding fiscal period. DPW obtains this information annually from participating nursing homes in the form of a standardized report, known as a Rule 49 Cost Report (hereinafter Cost Report), which is essentially a welfare rate application.

As part of its administrative responsibilities for the Medical Assistance program, DPW sets nursing home rates following desk audits of Cost Reports, and it periodically performs more exhaustive review of nursing homes' reports through field audits of their books and records. One purpose of the field audits is to assure that homes do not violate the strict require-

ments that only *bona fide* costs of nursing care be included in the Cost Reports.

In late 1974, Robert Rau, DPW Audit Director, assigned DPW auditor Raymond Otto to conduct a field audit at the Willmar Nursing Home. On completion of the audit Otto prepared a written report which he submitted to his supervisor, Rau. The report revealed a large volume of apparently inappropriate expenditures. At the suggestion of the Ruuds' accountant, Rau submitted a set of written questions to the Ruuds regarding the doubtful costs. The answers were submitted by Mrs. Ruud in affidavit form.

After reviewing Mrs. Ruud's affidavit, Rau and Otto both concluded that Mrs. Ruud was attempting to deceive DPW because her written answers contradicted certain facts which were previously ascertained during the field audit. They brought the matter to the attention of the Attorney General's office, which subsequently contacted the Kandiyohi County Attorney concerning possible criminal action.

On August 28, 1975, two search warrants were granted by Kandiyohi County Judge Allen Buchanan, authorizing the search of the record storage areas of Willmar Nursing Home located at the nursing home and the Ruuds' personal residence across the street. The warrants further authorized the seizure of the books and records of the nursing home discovered in the search. Sworn affidavits in support of the warrants were submitted by Robert Rau. Rau's affidavits relied on the information reported to him by Otto. Judge Buchanan also conversed at length with Mr. Rau, and put him under oath for at least half of his testimony.

Following the granting of the search warrants, which authorized Deputy Attorney General Thomas Fabel, Special Assistant Attorney General Barbara Gill, Willmar police officers

Richard James and John Kappers, and Rau and Otto to participate in the search, the party proceeded to the named addresses and executed the warrants at about 6:30 p.m. Fabel, Rau and Officer James first served the warrant for the residence on Royce Ruud. Fabel walked through the house with Mr. Ruud to ascertain the whereabouts of offices and record storage places. Fabel and James then served the warrant for the nursing home. When the search was completed about eight boxes of records were seized.

Following the search and seizure the Ruuds brought a motion for return of the property and suppression of its use as evidence and filed suit to enjoin the State from presenting the seized evidence to the Grand Jury. The district court (Thomas J. Stahler, J.) granted a temporary restraining order in the latter suit on September 19, 1975, and heard both the motion for suppression and the motion for temporary injunction on September 23, 1975. The court denied both motions, but ordered the State to return to the Ruuds all items seized pursuant to specification No. 13 of the search warrant. The State complied with Judge Stahler's Order.

On September 25, the State began presenting the case to the Kandiyohi County Grand Jury. On September 30 the Grand Jury returned an Indictment charging Royce Ruud, Norma Ruud, and Willmar Nursing Home, Inc., with two counts of theft and one count of filing false claims through the filing of a false Rule 49 Cost Report for fiscal year 1973-74. The Indictment was later amended to include only one count of theft.

Following trial all three defendants were convicted as charged. They subsequently appealed to the Minnesota Supreme Court which affirmed the convictions. Petitioners' motions for rehearing in the state court were denied.

ARGUMENT

I. THE DECISION OF THE MINNESOTA SUPREME COURT UPHOLDING THE SEARCH AND SEIZURE IS IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT.

The sole issue before this Court is whether the Minnesota Supreme Court correctly upheld the search and seizure in this case.

The Minnesota Supreme Court rejected Petitioners' assertion that the search warrants were general warrants in contravention of the Fourth Amendment requirement that a search warrant must particularly describe the place to be searched and the things to be seized. The Court correctly held that a warrant can only be as specific as the nature of the materials sought will allow. In applying this standard to the facts of this case, the Court found that all the financial records of the nursing home for the years at issue were relevant to a charge of welfare fraud and thus were properly within the scope of the warrant. The determination of the Minnesota Supreme Court is fully in accord with the applicable decisions of this Court. See, *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), *Stanford v. Texas*, 379 U.S. 476 (1965), *Marron v. United States*, 275 U.S. 192 (1927).

Petitioner further sought a determination in the Minnesota Supreme Court that the search itself was impermissibly general and went beyond the scope of the warrant because it covered the entire house. The search warrants authorized the search of the "offices and record storage places" of Petitioners' businesses located in their family home and in their nursing home. The Minnesota Supreme Court correctly held that the searching officers were within the scope of the warrant when they walked through the house and looked in the various rooms in an effort to identify all "offices and record storage areas." Petitioners fail to identify any applicable decision of this Court which the state court decision contravenes.

In their Petition to this Court, Petitioners raise other complaints about the execution of the search (Petition, 13 and 14). Those issues were not addressed by the state court and therefore cannot be considered before this Court. *Cardinale v. Louisiana*, 394 U.S. 437 (1969).

The state court also determined that the affidavits in support of the search warrants stated sufficient reliable facts upon which a finding of probable cause could be based. In reaching this decision the Court applied the two-prong test which this Court prescribed in *Aguilar v. Texas*, 378 U.S. 108 (1964), for application when an affidavit in support of a search warrant is based on hearsay. Essentially that case held that where the affidavit in support of an application for search warrant is based on hearsay the magistrate applied to must be informed of: (1) some of the underlying circumstances from which the informant drew his conclusions; and, (2) the underlying circumstances from which the affiant concluded that the informant was reliable and credible.

In preparing the affidavits the affiant, Rau, the Director of the Audit Division of the Minnesota Department of Public Welfare relied on Otto, his subordinate who had actually conducted the audit. Thus, the affidavit was based in large part on hearsay. The state court determined that the affidavits, in detailing an authorized state audit of petitioners' nursing home and the results of that audit, stated sufficient under-

lying facts to support the magistrate's conclusion that probable cause existed to believe a crime had been committed. This determination squarely meets the first requirement of the *Aguilar* test.

The state court also determined that the informant, the auditor Otto, was reliable because he was a state employee who gained his information from firsthand observation while in the course of his employment. In reaching this decision the state court correctly applied the second half of the *Aguilar* test.

Petitioners assert that the judicial officer issued the search warrants on the basis of unsworn testimony (Petition, 14). Again, this issue was not decided by the state supreme court and cannot be raised before this Court. *Cardinale v. Louisiana, supra.*

The Minnesota Supreme Court properly upheld the search and seizure in this case after careful analysis of Petitioners' allegations and appropriate application of the relevant law. As there is no error in the state court's decision, this case should not be reviewed by this court.

II. THE DECISION OF THE MINNESOTA SUPREME COURT DOES NOT RAISE A NEW ISSUE OR ONE OF SUFFICIENT IMPORTANCE TO REQUIRE REVIEW BY THE SUPREME COURT.

In its decision upholding Petitioners' conviction, the Minnesota Supreme Court merely followed the guidelines as set out by the relevant decisions on search and seizure. The state court was not required to develop a new principle of law but only to apply principles previously enunciated by this Court.

Furthermore, the facts of this case are not of such a new, unique or unusual nature as to warrant review of the state court decision by this Court. The Minnesota Supreme Court properly affirmed Petitioners' convictions. That decision does not raise a new issue or one of sufficient importance to require review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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